

(2007) 05 OHC CK 0074

In the Orissa High Court

Case No : Writ Petition (C) No"s. 2446 of 2007

Orissa Management Colleges Association

APPELLANT

Vs

State of Orissa

RESPONDENT

Date of Decision : 18-05-2007

Acts Referred:

All India Council for Technical Education Act, 1987 — Section 10, 11, 23(1), 33, 33(1)
Constitution of India, 1950 — Article 141, 15, 15(5), 19(1), 19(6)
Orissa Professional Educational Institutions (Regulation of Admission and Fixation of Fee) Act, 2007 — Section 20, 7
Penal Code, 1860 (IPC) — Section 193, 196, 228

Citation : AIR 2007 Ori 120 : (2007) 104 CLT 310

Hon'ble Judges : A.K. Ganguly, C.J;N. Prusty, J

Bench : Division Bench

Advocate : G. Rath, Miss Pami Rath, Umesh Chandra Pattnaik, S.D. Mishra, N.R. Rout and S. Patnaik, in W.P. C No. 2446/07, V. Narasingh and S.K. Senapati, in W.P. C No. 3203/07 and Amitav Bagchi, D. Nanda and G. Sabar, in W.P. C No. 3689/07 and A.K. Ganguli, D.K. Dey, S.K. Ghosh, C.K. Dey and A.K. Das, in W.P. C No. 4073/07, for the Appellant; J.M. Mohanty, Government Advocate, J.K. Mishra, Asst. Solicitor General for O.P. No. 1 in W.P. (C) No. 4073/07, for the Respondent

Final Decision : Allowed

Judgement

A.K. Ganguly, C.J.—Four writ petitions have been filed challenging constitutional validity of the Orissa Professional Educational Institutions (Regulation of Admission and Fixation of Fee) Ordinance, 2007 (hereinafter referred to as the "said Ordinance"). During the course of hearing of the matter before the Court, the said Ordinance was replaced by an Act and came to be known as Orissa Professional Educational Institutions (Regulation of Admission and Fixation of Fee) Act, 2007 (hereinafter referred to as the "said Act"). Out of the four writ petitions, in W.P. (C) No. 4073 of 2007 Article 15(5) of the Constitution which has come by way of 93rd Amendment to the Constitution has also been challenged. Learned Counsel for the Petitioner, however later on gave up the said challenge.

2. But, in all these writ petitions the constitutional validity of the said Ordinance as replaced by the said Act was challenged.

3. First of these four writ petitions was registered as W.P. (C) No. 2446 of 2007, which was filed by the Orissa Management Colleges Association. That is an Association of 22 Private Unaided Professional Educational Institutions claiming to impart education in management studies and the said Association is registered under the Societies Registration Act, 1860. The writ Petitioner in W.P. (C) No. 3203 of 2007 is Kanakmanjari Trust, a Trust established to impart education in Pharmacy through its private unaided educational institution, which is in existence since 1982. The Petitioner in W.P. (C) No. 4073 of 2007 is also a registered Association under the Societies Registration Act, 1860 and is an Association of Private Unaided Engineering Colleges of Orissa and is engaged in imparting education in different courses in the subject of Engineering and Management. The Petitioner in W.P. (C) No. 3689 of 2007 is an Association of Private Unaided Medical and Dental Colleges in Orissa claiming to impart education from the academic session 2006-07 to the Medical students and claiming to impart education to Dental students from 2005-06. Since in all the writ petitions, the point of law is the same and the questions of fact are almost identical, by this common judgment all those questions are decided.

4. It has been common case of all the Petitioners that all the institutions have been established after obtaining necessary permission and approval of All India Council for Technical Education as also of the Medical Council of India and Dental Council of India, as the case may be. All these Councils have been constituted under the Central Laws and all such Central Laws empower the concerned Council to frame Regulations from time to time. The admission to different institutions are covered by such Regulations.

5. It is not in dispute that being guided by such Regulations, all these Petitioners were carrying on admission procedure which was commonly known as Common Entrance Test (hereinafter referred to as "CET"). The Government, in so far its own institutions are concerned, was also carrying on admission under Joint Entrance Examination (Engineering and Medical) (hereinafter referred to as "JEE (E and M)"). Both CET and JEE (E and M) were simultaneously going on. The holding of test known as CET at the instance of the private unaided Engineering educational institutions in the last year (2006) has been sought to be abolished under the Ordinance, later on replaced by the said Act: The said abolition of admission system and the total control of the fee structure are the two principal areas of challenge.

6. Learned Counsel for all the Petitioners have challenged the provisions of the said Act on two principal grounds except the learned Counsel for the Petitioners in W.P. (C) No. 3689 of 2007. Mr. Bagchi, the learned Counsel arguing for the Petitioner in that case did not urge that State has no legislative competence to enact the said Act. Mr. Bagchi, urged that in view of the decision of the Supreme Court in the case of T.M.A. Pai Foundation and Others Vs. State of Karnataka and

Others, , it has been held that the right to establish and run a private unaided educational institution is a fundamental right within the sweep of Article 19(1)(g) of the Constitution. The said fundamental right is only subject to laws imposing reasonable restrictions under Article 19(6) of the Constitution on the grounds specified therein. The restrictions imposed under the said Act are not reasonable restrictions nor is it covered under the heads of restriction under Article 19(6) of the Constitution. The learned Counsel for the other Petitioners argued this in the alternative.

7. But the main argument of the Petitioners in other three writ petitions is that the area of education with which the Petitioners herein are concerned is higher and technical education. Entry 66, List I of the Seventh Schedule of the Constitution of India enables the Parliament to legislate in that field. In so far as the State Legislature is concerned, it has no competence to legislate in this area under the State List. Previously Entry 11 of the State List (List II) provided for legislation in this area. But the said Entry has been deleted with effect from 3.1.77 by 42nd amendment to the Constitution and now the State's legislative power in this area is to be derived from Entry 25 of the Concurrent List as amended by the 42nd Amendment of the Constitution. The said Entry 25 of the Concurrent List has been made expressly subject to the provision of Entry 66 of List I of the Seventh Schedule.

8. It has been argued that this being the constitutional dispensation, the State does not have legislative competence to legislate in an area where there is a pre-existing of Central Law and Regulations framed thereunder governing the field. It has been argued that under various Central Acts, regulations and instructions issued thereunder from time to time, the admission procedure and the fee structure of these institutions are guided and governed under those regulations. Therefore that area is already occupied by those Guidelines/ Regulations/ Instructions issued under laws made by Parliament, and the same must be treated to be a field occupied by those laws. In that area, the State does not have any competence to legislate. The said Act being a legislation by the State Legislative Assembly in the aforesaid occupied area, is unconstitutional inasmuch as it purports to trench upon and overlap the law made by the Parliament. The said Act, being thus opposed to the scheme of distribution of legislative power under the Constitution is unconstitutional and bad in law.

9. The said Act was notified on 17th April, 2007 being Orissa Act 4 of 2007. This was done in the course of hearing of these petitions. After the Act was notified, necessary amendment petitions were filed by the Petitioners and the amendments were allowed.

10. The said Act has 19 Sections. A perusal of the preamble of the said Act makes it clear that the enactment is inspired by the observation made by the Hon"ble Supreme Court in the case of Islamic Academy of Education and Another Vs. State of Karnataka and Others, and also the judgment of the Supreme Court in the case of P.A. Inamdar and Ors. v. State of Maharashtra and Ors. reported in

(2005) 6 SCC 537 and also the 93rd Amendment of the Constitution of India by which Clause 5 to Article 15 of the Constitution was added.

11. The said Act was deemed to have come into force on 2nd March, 2007 (Sub-section (3) of Section 1 of the Act). In the said Act the academic year commences from the 1st day of June every year. u/s 2(f) of the said Act, a Committee called Fee Structure Committee has been set up. The said Committee is constituted u/s 6 of the said Act. u/s 2(k) of the said Act "Joint Entrance Examination (JEE)" has been defined to mean entrance test conducted by the Policy Planning Body for all professional educational institutions, for determination of merit of the candidates followed by centralized counselling for the purpose of admission to such institutions through a single window system.

12. u/s 2(S), "Private Professional Educational Institution" has been defined to mean professional educational institution which is not established and managed by Government, Union Government or Government of any other State. "Professional Educational Institution" has been defined u/s 2(u) to mean college or school or an institute, by whatever name called, imparting professional education or conducting professional educational courses leading to the award of a degree, diploma or a certificate by whatever name called, and in several sub-clauses various disciplines have been mentioned. The Petitioners are coming within those disciplines mentioned u/s 2(u). "Qualifying examination" has been defined to mean examination as may be determined by the Policy Planning Body as qualifying for the purpose of appearing in JEE. u/s 2(z), "single window system" has been defined to mean the centralized system for admission administered by the Policy Planning Body. Section 3 makes it very clear that the admission of students in all private professional educational institutions, Government institutions and sponsored institutions to all seats including lateral entry seats, shall be made through JEE conducted by the Policy Planning Body (hereinafter referred to as the "said Body"). The same will be followed by centralized counselling in order of merit in accordance with such procedure as recommended by the said Body and approved by the Government. The composition of the Policy Planning Body under Section. 4 shows it will consist of members who are nominated by the Government. Almost all the members are Government nominees and two members of the Orissa Legislative Assembly shall be elected from among themselves as members of the said Body. Sub-section (4) of Section 4 mandates that no person who is associated with any private professional educational institution can become a member of the said Body. A member of the said Body shall be removed if in the opinion of the Government, he does any act which is unbecoming of a member of such Body and once a member is so removed he shall not be so re-nominated. Under Sub-section (6) of Section 4 the Policy Planning Body has been allowed to perform the following functions:

- (a) regulate the admission;
- (b) formulate policy guidelines for holding JEE;

(c) constitute one or more sub-committees for efficient discharge of its functions in the matter of examination and admission;

(d) formulate and recommend the reservation policy to Government for approval, which shall be with regard to reservation of seats in favour of Scheduled Castes, Scheduled Tribes, SEBC, green card holders, Ex-servicemen, sports persons and physically handicapped persons;

(e) determine the eligibility criteria and qualifying examination required for admission; and

(f) perform such other functions as may be prescribed.

13. Under Sub-section (7) of Section 4 the said Body has been authorized to supervise and guide the entire process of admission of students to the Government Institutions, private professional educational institutions and sponsored institutions with a view to ensuring that the process is fair, transparent, merit-based and non-exploitative. Under Sub-section (8) of Section 4 the said Body has been authorized to hear complaints with regard to admission in contravention of the provisions of the Act or Rules or Orders or Guidelines made thereunder. The said Body has been authorized to make recommendation to the State Government for imposing fine on any institution if it finds that there has been any contravention in admission of the said Act by any private professional educational institution. Under Sub-section (10) of Section 4 the said Body has been authorized to declare, apart from the power of imposition of fine, that admission made in respect of any or all seats in a particular professional educational institution to be invalid and recommend to the University or Statutory Body concerned for withdrawal of affiliation or recognition, as the case may be, of such institution. Under Sub-section (11) of Section 4 the said Body has been given the power to regulate its own procedure in all matters relating to discharge of its functions and has been authorized for the purpose of making any inquiry under the said Act with some of the powers of a Civil Court and under Sub-section (12) any proceeding before the said Body shall be deemed to be a judicial proceeding within the meaning of Sections 193 and 228 and Section 196 of the Indian Penal Code.

14. Sub-section (1) of Section 5 of the said Act prohibits collection of capitation fee from any candidate by any professional educational institution or by any person who is in charge of the management of the institution. Sub-section (2) of Section 5 provides that if the said Body receives any complaint or is otherwise satisfied that the management of the institution or any person, in charge of the management of the institution, has contravened the provisions of Sub-section (1), the Body may, after making due enquiry in the manner prescribed, recommend to the Government for imposition of fine not exceeding ten lakhs on the management of the concerned institution for such contravention. Section 6 of the said Act provides for the constitution of a committee known as Fee Structure Committee for determination of fee for admission to the private professional

educational institutions and sponsored institutions. Such Committee shall consist of almost all the Government officials and the Vice Chancellor of Biju Patnaik University of Technology shall be the Chairperson of that Committee. In the said Committee also there will be two Members from the Legislative Assembly, who shall be elected from themselves and will become Members of that Committee. Sub-section (3) of Section 6 equally mandates that no person associated with any private professional educational institution can be a Member of the said Committee. A Member of the said Committee can also be removed in a similar manner as a Member of the said Body. The power of the Fee Structure Committee is detailed in Sub-section (6) of Section 6. Under Sub-section (7) of Section 6 it is made clear that the fees fixed by the Committee after Government approval shall be binding on all the institutions for a period of three years and the candidate who is admitted to such institution in that academic year shall pay the said fee and it shall not be revised till completion of the course of such candidate in such institution. The Fee Structure Committee shall have the power to regulate its own procedure for discharge of its functions and for the purpose of making any enquiry under the Act it shall have some of the powers of a Civil Court under the Code of Civil Procedure, 1908 and every proceeding before such Committee shall be deemed to be a judicial proceeding within the meaning of Sections 193, 228 and 196 of the Indian Penal Code, 1860. u/s 7 of the said Act, the factors which such Committee shall consider for determination of the fee have been mentioned. There are provisions for every professional educational institution for following the reservation policy of the Government which shall be notified for the said purpose. Of course minority institutions have been exempted from following the reservation policy of the Government. u/s 11 it is made clear that any admission made in violation, of the provisions of the Act or the Rules made thereunder shall be invalid. Under Sub-section (1) of Section 15 it has been made clear that whoever contravenes the provisions of the Act or the rules made thereunder shall, on conviction be punishable with imprisonment for a term which shall not be less than one year but which may extend to three years and with fine which may extend to rupees ten lakhs. The Rule making power of the Government is provided u/s 17. But, this Court has not yet been informed whether the Rules have been made or not. This is substantially the structure of the said Act which is being challenged in these writ petitions.

15. The learned Counsel for all the Petitioners submitted that such provisions have been made in the State law when there are already existing Central law under which the Petitioners are governed. Reference in this connection was made to the All India Council for Technical Education Act, 1987 which was enacted by the Parliament. The All India Council for Technical Education Act (hereinafter called as "the AICTE Act") establishes a Council u/s 3 thereof. u/s 10 of Chapter - III of the said Act the functions of the Council have been enumerated under various sub-sections. Sub Sections (b), (j), (k), (1) and (o) which are relevant in the context of the present case are set out below:

10. Functions of the Council- xx xx xx.

(b) co-ordinate the development of technical education in the country at all levels;

xx xx xx

(j) fix norms and guidelines for charging tuition and other fees;

(k) grant approval for starting new technical institutions and for introduction of new courses or programmes in consultation with the agencies concerned;

(l) advice the Central Government in respect of grant of charter to any professional body or institution in the field of technical education conferring powers, rights and privileges on it for the promotion of such profession in its field including conduct of examination and awarding of membership certificates;

xx xx xx

(o) provided guidelines for admission of students to technical institutions and Universities imparting technical education.

16. The Council under the said Act had issued necessary guidelines. Those guidelines have been issued by the Council in exercise of its power u/s 23 read with Section 10(b) and 10(o) of the said Act. This Court has been handed over a copy of the guidelines for Common Entrance Test (s) for admission to Degree level Engineering, Architecture/Planning and Pharmacy Programmes in the country, for the academic year 2004-05, onwards. Under Clause (4) of the said guidelines it is provided as follows:

(4) States may conduct their own common entrance test (s) for admission to institutions conducting Degree Engineering, Architecture/Planning and Pharmacy Programmes within their States or join the AIEEE. State level tests shall, however, be restricted to fill up seats from the students of their own States only.

The preamble of the said Guidelines is as follows:.

No. F. 37-3/Legal (vi)/2003.- In pursuance of the judgment of the Hon''ble Supreme Court delivered on October 31, 2002 and August 14, 2003 and in terms of Policy Framework laid down by the Ministry of HRD in the Department of Secondary and Higher Education, Government of India vide No. F.17-18/2002-TS.I dated October 15, 2003 and in exercise of the powers conferred u/s 10(b) and 10(o) of AICTE Act, 1987 (52 of 1987), the All India Council For Technical Education (AICTE) hereby makes the following guidelines on Common Entrance Test(s) for admission to Engineering, Architecture / Planning and Pharmacy Programmes in the country.

17. It is clear from the aforesaid preamble that under the Guidelines issued by AICTE the Common Entrance Test was allowed. The said guidelines have also allowed the students to take their own Common Entrance Test and the said Guidelines also provide for All India basis Common Entrance Test.

18. Learned Counsel for the Petitioners submit that under the said Act the

Common Entrance Test has been abolished even though the said Test is permissible under the Central law. The said Act thus seeks to encroach upon the area which is already occupied by the Central law. In fact, acting under the said Ordinance the Government of Orissa in the Finance Department had already issued an order dated 15th March, 2007 for the academic session 2007-08.

19. In W.P. (C) No. 2446 of 2007, it has been contended that the colleges and the institutions which are registered under the said Society are recognized institutions by the All India Council for Technical Education and affiliated to Biju Patnaik University of Technology. It is also stated that in view of such position it is the AICTE which prescribes the sitting capacity providing for admission of students and Biju Patnaik University of Technology (in short, "BPUT") accords affiliation for those disciplines which are covered by the programmes of the University. It has been alleged that the provisions of the said Act will curtail the rights of those professional institutions to carry on the admission procedure in accordance with the AICTE Regulations.

20. In W.P. (C) No. 4073 of 2007 the Petitioner has referred to the objects of the guidelines issued under the AICTE Act and made a clear averment that the said Act has been made in order to prescribe the guidelines for admission of students and for charging of fees etc. with a view to maintaining the standards and to provide recognition or withdrawal of recognition of such institutions. It was the normal practice of the Petitioner Association to conduct the Common Entrance Test for admitting the students to respective institutions as well as to admit students from Joint Entrance Examination conducted by the State Government. It was averred that the Common Entrance Test conducted by the Petitioner during the previous years was done under the direct control and supervision of the State Government till a Committee was formed comprising a retired High Court Judge, which controlled and supervised such admission through Common Entrance Test to respective institutions. It has also been stated that the Petitioner's institutions are regulated by AICTE Act.

21. In W.P. (C) No. 3203 of 2007, it has been stated that the Petitioner's institution follows the AICTE norms and recognition and that is why it was graded as ISO 9001 and issued ICI certificate. It is imparting education in Pharmaceutical Sciences in the state of Orissa to be honoured with ISO certificate, The Petitioner's institute is also affiliated to Biju Patnaik University of Technology and it offers Diploma, Degree and Post Graduate Courses in Pharmaceutical Sciences. It has been further stated that the Orissa Pharmacy College Association has already issued a brochure for Common Entrance Test, 2006. The said brochure is available in the website. They have also annexed the admit cards for such Common Entrance Test which was held in 2006 and the application form for such test which was held in 2006.

22. So far as the M. Pharma application form of 2007 is concerned, the admission form has also been annexed. The Petitioner has also annexed a notification dated 14.9.2006 which was issued by All India Council for Technical

Education in exercise of power conferred under Sub-section (1) of Section 23 read with Section 10(b)(g)(i)(k)(p) and (v) and Section 11 of the AICTE Act making certain Regulations. Under Clause (b) of the said notification it is provided that "technical institution" means the institution of Government, Government Aided and Private (self financing) institutions conducting the Courses/Programmes in the field of technical education, training and research In Engineering, Technology including MCA, Architecture, Town Planning, Management, Pharmacy, Hotel Management etc. In Clause 2.5(4) it has been provided that no admission authority/body/institution shall permit admission of students to a course/ programme of technical institution not approved by AICTE.

23. The learned Counsel for the Petitioners submit that such Regulations which have been framed by the Central Act are directly hit by the provisions of the said Act which are under challenge. If any admission is made to any technical institution in contravention of the provisions of the said Act, same has been made a punishable offence. But the regulations framed by the Central Act provide if admission is made contrary to those regulations, the affiliation of such technical education under the AICTE Act will be withdrawn. Relying on the aforesaid Regulations, it has been said that the said Act clearly seeks to override the regulations framed under AICTE and seeks to create a conflict by encroaching upon the field occupied by the Central law and the Regulations issued thereunder.

24. The Petitioner in W.P. (C) No. 3689 of 2007 has urged that in 2006 the CET examination in association with Orissa Private Medical and Dental Colleges Association was held and in connection with the said examination the fee structure was decided by the Judge's Committee, and it has been urged that the institutes are affiliated with Medical Council of India. It was also stated that under the Medical Council of India Regulations, these new colleges have to undergo the periodical annual inspection, and as such the said Act will affect the right of management of the Petitioner to hold the Common Entrance Test as it was held in the last year.

25. The Dentists Act, 1948 was enacted for the purpose of laying down standards of education and training in Dental colleges. After the Constitution was brought into effect, the said Act suffered several amendments, once in 1955, then in 1972 and lastly in 1993. The objects and reasons of 1993 amendment would indicate that the same was done for incorporating in the original Act certain provisions with prior permission of the Central Government and those provisions must be followed by the State Government for establishing a new Dental College and starting new or higher courses or training in those colleges. The admission capacity of such institutions are controlled by the said amendment. Under the said Dentists Act, the Dental Council has been constituted u/s 3 of the said Act. The said Council has the power to make regulation u/s 20. Such regulations are to be framed with the approval of the Central Government and are to be published by notification in the Official Gazette and u/s 20(1)(g) the said Council has the authority to make regulation for prescribing the standard curricula for

training and the conditions for admission to course of such training.

26. Similarly under Medical Council Act, 1956, the Medical Council has been established u/s 3 of the said Act. The said Council has the power to frame regulation u/s 33 and u/s 33(1) the said Council has been empowered to make regulation for the conduct of professional examinations, qualifications of examiners and the conditions of admission to such examinations.

27. It is therefore clear that by laws made by the Central Government such as the Dentists Act, Medical Council Act, All India Council for Technical Education Act, Pharmacy Act, the field of higher and Technical education has been occupied by the Central laws. Under such Central Legislations, the maintenance of standard of such higher education is governed by regulations made by several Councils which are authorised to do so under the said Act namely, Dental Council created under the Dentists Act, 1948, Medical Council created under the Medical Council Act, 1956, All India Council for Technical Education created under the All India Council for Technical Education Act and Pharmacy Council created under the Pharmacy Act.

28. The Learned Assistant Solicitor General appearing for the Central Government also supported the Petitioners' argument of occupied field and submitted that since the field is occupied by the Central Legislation, the State Government is not competent to legislate on the said occupied field.

29. Learned Counsel appearing for the State Government did not factually dispute the aforesaid contention that the institutes which have filed petitions before this Court are affiliated and recognized under the Central law nor was it disputed that till 2006, these institutes were carrying on common entrance test on the basis of various regulation framed under the Central Law. Learned Counsel for the State Government has urged that in view of the judgments of the Supreme Court in Islamic Education and P.A. Inamdar, the State Government is authorized to make laws and the State Law has been made in response to such mandate of the Supreme Court. Learned Counsel for the State has also placed reliance on the very same judgment on which reliance was placed by the learned Counsel for the Petitioners and the learned Counsel submitted that the learned Counsel for the Petitioners misconstrued the judgments of the Supreme Court and erroneously urged that the State Government does not have legislative competence to legislate the said Act. Learned Counsel for the State submitted that the State Government has enacted the legislation in the interest of the students so that they do not suffer by way of appearing in two entrance test by giving fees in both the examination. It has also been stated that the State Government has undertaken the legislation to give relief to the students from exploitative entrance test and from paying huge exploitative fees to the Private Institutions for their admission. Therefore, the State Government is motivated by concerns of social justice in enacting the law in question. It is also submitted that the said Act is protected by the provisions of Article 15(5) of the Constitution.

30. Since the question of legislative competence prominently figures in the argument advanced in this case, for better appreciation of the points involved, the Entries on the basis of which legislative competence of the State is debated are set out hereinbelow. Entry 66, List I runs as follows:

66. Co-ordination and determination of standards in institutions for higher education or research and scientific and technical institutions.

Previously the State by virtue of Entry 11 was empowered to legislate in the field of higher education. Entry 11, List II as it existed prior to its deletion with effect from 3.1.1977 by 42nd Amendment to the Constitution was as follows:

Education including Universities subject to the provisions of items 63,64, 65 and 66 of List I and 25 of List III.

31. After the deletion of the aforesaid Entry by 42nd Amendment, the State's power to legislate in the field of higher education is contained only in the Concurrent List. Entry 25, List III as amended by the 42nd Amendment is set out below:

Education, including technical education, medical education and universities subject to the provisions of Entries 63, 64, 65 and 66 of List I; vocational and technical training of labour.

32. When an Entry either in the State List or in the Concurrent List is made "subject to", an Entry in the Union List, the question of construing such an Entry fell for consideration before the Supreme Court on more than one occasions.

33. In *The Hingir-rampur Coal Co. Ltd. and Others Vs. The State of Orissa and Others*, the aforesaid question came up in the context of construing Entry 23 in the State List (List II) which was about regulation of mines and mineral development, as the same was made subject to Entry 54 of List I which was in respect of regulation of mines and mineral development under the control of the Union. The learned Judges of the Supreme Court while considering the effect of reading two Entries together opined that the jurisdiction of the State Legislature under Entry 23 being subject to limitation imposed by later part of Entry 54, the power of the State to legislate in the area covered by the Central Act is obviously not there. In such a situation the validity of the State Act vis-a-vis the Central Act has been summed up as follows:

... if a Central Act has been passed which contains a declaration by Parliament as required by Entry 54, and if the said declaration covers the field occupied by the impugned Act (meaning the State Act), the impugned Act would be ultra vires, not because of any repugnance between the two statutes, but because the State Legislature had no jurisdiction to pass the law this position is not in dispute." (Pages 469-470, para 23 of the report)

Subsequently the Supreme Court in the case of *The Gujarat University, Ahmedabad Vs. Krishna Ranganath Mudholkar and Others*, , relied on the

principles in the case of Hingir Rampur Coal Company and held that "the expression "subject to" in item 11 of List II of the Seventh Schedule clearly indicates that legislation in respect of excluded matters cannot be undertaken by the State Legislatures".

34. The learned Judges further explained "power of the State to legislate in respect of education including Universities must to the extent to which it is entrusted to the Union Parliament, whether such power is exercised or not, be deemed to be restricted". The learned Judges clearly said "if a subject of legislation is covered by items 63 to 66 even if it otherwise falls within the larger field of education including universities (as was the position prior to 42nd Amendment), the power to legislate on that subject must lie with the Parliament. (See paragraph 23 at page 715).

35. Now State's exclusive power to legislate in the field of education is not available. Even when such power was available prior to 42nd Amendment, Supreme Court held that the power under Item 11 of List II and Item 66 of List I must be harmoniously construed as the power under two Entries may overlap, but to the extent of overlapping, the power conferred by Item 66 List I must prevail over the power of the State under item 11 of List II. (See Paragraph 23, page 715).

36. In *R. Chitrallekha and Another Vs. State of Mysore and Others*, the validity of the order made by the Government of Mysore in respect of admission to Engineering and Medical Colleges in the then State of Mysore was in issue. In the then State of Mysore most of the Engineering and Medical Colleges were Government Colleges and few of them were Government aided colleges. The State Government appointed a Common Selection Committee for conducting admissions to the Engineering colleges and Anr. common selection committee for conducting admissions to Medical Colleges. In the matter of admission to those colleges the Government issued several directions. One of the contentions in that case was that the Government had no power to appoint the Common Selection Committee for admitting students to colleges on the basis of higher or different qualifications than those prescribed by the University and, therefore, the orders made by the Government in respect of admissions were illegal. This argument was based on the proposition that co-ordination and determination of standards of a university is a Union subject and the State Legislature has no constitutional competence to make a law for maintaining the standards of university education. As such the conflict between Entry 11 of List II which existed at that point of time and Entry 66 of List I of the 7th Schedule came up for consideration. In that background, the learned Judges of the Supreme Court relied on the decision in the case of *Gujarat University* and held that if a law is made by the State by virtue of Entry 11 of List II of the 7th Schedule, which power the State does not have now, makes it impossible or difficult for the exercise of legislative power of the Parliament under Entry 66, List I in that case the State law may be bad. (See paragraph 7, at page 1830). The learned Judges held that this cannot obviously

be decided on speculative and hypothetical reasoning. But if the impact of the State law is so heavy on devastating on the law made in exercise of the power under Entry 66, List I as to wipe out or appreciably abridge the central law, the State law is to be struck down.

37. In the instant case, the said Act, which has been discussed above has totally prohibited the admission procedure under the Central laws. Therefore, following the ratio in the case of R. Chitralekha and other decisions discussed above, the inescapable conclusion is that in the facts of the instant case, the State law definitely seeks to encroach upon the field occupied by the regulations framed under pre-existing central laws. In the case of R. Chitralekha, the Supreme Court opined that the State Government has power to prescribe a machinery and criteria for admission of students in the medical and engineering colleges run by the Government and with the consent of the management of the Government aided colleges in respect of those colleges also. (See paragraph 10 at page 1831). But in the instant case, the procedure for admission which has been made under the said Act has been made applicable in the case of all the private colleges and the consent of the private colleges obviously has not been taken.

38. In the case of State of Orissa Vs. M.A. Tulloch and Co., , the Supreme Court laid down the test of repugnancy between the two enactments. In that case also, Entry 54, List I of the 7th Schedule and Entry 23, List II of the said Schedule came up for consideration and the principle laid down in Hingir-Rampur Coal Company was reiterated. The learned Judges in paragraph 15 held that the question of repugnancy arises when two enactments within the competence of two Legislatures collide. Where the Constitution expressly or by necessary implication provides that the enactment of one Legislature has superiority over the other then to the extent of the repugnancy the one supersedes the other. But the Supreme Court has expanded the concept to the extent that the two enactments may be repugnant to each other even though obedience to each of them is possible without disobeying the other. The Supreme Court further explained by saying that existence of contradictory provisions is not the only test of repugnancy. According to the Supreme Court, the real test is "if a competent legislature with a superior efficacy expressly or impliedly evinces by its legislation an intention to cover the whole field, the enactments of the other legislature whether passed before or after would be overborne on the ground of repugnance". The Supreme Court said that in such a case the inconsistency is demonstrated not by a "detailed comparison of provisions of the two statutes but by the mere existence of the two pieces of legislation". (Para 15, page 1291-92 of the report). In the instant case, those principles are squarely attracted.

39. The question of repugnancy in the field of education between the State Law and the Central Law came up for consideration before the Apex Court again in Osmania University Teachers' Association Vs. State of Andhra Pradesh and Another, . In that case, the Apex Court considered the Andhra Pradesh Commissionerate of Higher Education Act, 1986, enacted by the State

Legislature. The Supreme Court found it to be a duplicate of the University Grants Commission Act, 1956 and held that Entry 25, List III and Entry 66, List I should be read together. In paragraph 15 of the said judgment, the learned Judges after construing these two Entries in paragraph 14 made the following observations which are set out below:

The Parliament has exclusive power to legislate with respect to matters included in List 1. The State has no power at all in regard to such matters. If the State legislates on the subject falling within List I that will be void, inoperative and unenforceable.

40. In paragraph 17 of the said judgment, the observation in Gujarat University's case was quoted in extenso. In Osmania University's case, after discussing various provisions of the Commissionerate Act, the learned Judges in paragraph 26 held that the State Act has been passed as a parallel enactment under Entry 25 of List III and it encroaches upon Entry 66, List I and such an encroachment is patent and obvious. In view of such opinion of the Apex Court, this Court is of the opinion that in the said Act encroachment on the occupied field is also obvious, and which makes the said Act unconstitutional as it is beyond the legislative competence of the State.

41. The same question came up for consideration before the Supreme Court in the case of State of T.N. and Another Vs. Adhiyaman Educational and Research Institute and Others, . It was held in the said judgment that The All India Council for Technical Education Act, 1987 falls within Entry 66, List I and Entry 25, List III of the 7th Schedule. It was, therefore, held that on the subjects covered by the All India Council for Technical Education Act, the State cannot make a law either under entry 11 of List II, which is prior to the 42nd Amendment to the Constitution nor can it make a law under Entry 25 of List III which has come into existence after the 42nd Amendment to the Constitution. In paragraph 22 of the said judgment, it has been held that the Central Act, namely, All India Council for Technical Education Act obviously has been enacted for coordinated and integrated development of the technical education system at all levels throughout the country and is enjoined to promote qualitative improvement of such education in relation to planned quantitative growth. In the said paragraph it has been held "That the Council is also required to provide guidelines for admission of students and has power to withhold or discontinue grants and to de-recognize the institutions where norms and standards laid down, by it and directions given by it from time to time are not followed". It was made clear towards the end of paragraph 22 that on the subjects covered by the said Act, the State could not legislate under Entry 11 of List II prior to 42nd Amendment nor can it do so under Entry 25 of List III after the 42nd Amendment.

42. Apart from the aforesaid decisions, there is a still more recent judgment of the Supreme Court in the case of Bharati Vidyapeeth [Deemed University] and Others Vs. State of Maharashtra and Another, . In paragraph 16 at page-1947 of the report, the Supreme Court made it clear that within the concepts of

coordination and determination of standards, the entire gamut of admission will fall. While saying so the Supreme Court clarified that if any aspect of admission of students in colleges falls within Entry 66, it necessarily stands excluded from the competence of State to legislate on the same as has been held in the Gujarat University's case (supra) and the learned Judges approvingly quoted from the Gujarat University's case. In paragraph 17 of the said judgment, the learned Judges made it very clear that the power to legislate in regard to those aspects are entirely carved out of the subject of education and vested in Parliament even at a time when "Education" fell under List II. Now that education is no longer within List II they found no reason not to accept the arguments that once the institution comes within the scope of Entry 66 of List I, it falls outside the control of the provisions of Entry 25 of List III. In the instant case, all the institutions run by the Petitioners fall under Entry 66 of List I in view of the statutory provisions made under the AICTE Act and the Medical Council Act and the regulations made thereunder as discussed above.

43. In Bharati Vidyapeeth case, in paragraph 20 it has been held that some institutions may be controlled to an extent by the State in regard to admission as a condition of affiliation. But if those institutions operate in the field of higher education they must follow the standard prescribed by the statutory authorities such as UGC, Medical Council, Dental Council, AICTE governed by Entry 66 of List I of the Constitution. In that view of the matter, this Court is of the opinion that in matters of admission to the institutions of higher education run by the Petitioner the State cannot introduce an admission procedure by completely abolishing the admission procedure prescribed under the AICTE Regulations.

44. In this connection the AICTE Regulations of 2006 on which reliance has been placed by the learned Counsel for the Central Government is relevant. The notification on which the learned Counsel for the Central Government placed reliance is dated 14th September, 2006 issued in exercise of power conferred by Sub-section (1) of Section 23 read with Section 10(b)(g)(i)(k)(p) and (v) of Section 10 and Section 11 of the AICTE Act. Under regulation 2.5(4) of the said Regulation it is provided that no admission authority/body/institution shall permit admission of students to a course/programme of Technical Institutions not approved by AICTE. In the instant case, admission authority which has been allegedly created under the said Act is purporting to admit students in a manner which is not approved by the AICTE and as such there is a clear encroachment by the said Act upon the areas covered by the Central Law.

45. In the case of Islamic Academy of Education and Another Vs. State of Karnataka and Others, , the Supreme Court has held that some time under the Central Act the State Government has been delegated with the power to determine fee structure in respect of professional institutions whereof requisite guidelines are issued by the State Government pursuant to such delegated power. But in the instant case, the State Government has not been given any such delegated authority nor is the State Government acting as a delegated

authority of the Central Government under the said Act. In the instant case, the said Act has been enacted by the State Government independently. This independent legislative power cannot be exercised by the State in view of the fact that the field of Higher and Technical Education is covered by Central enactments in exercise of its power under Entry 66 of List I and various Regulations under such Central law is governing the field.

46. In so far as imposition of fee structure is concerned, the same has been dealt with u/s 6 of the said Act by which Fee Structure Committee has been set up. It is clear from a perusal of the composition of the said Committee that same is completely controlled and dominated by the Government and anyone associated with the private professional educational institution cannot be even a member of the said Committee. Learned Counsel for the State submitted that same has been done with a view to prevent the private un-aided institutions from charging capitation fee or indulging in profit motive. But the AICTE Act, Section 10(j) deals with fixation of norms and guidelines for charging tuition and other fees and u/s 10(n) of the said Act the Council is specially authorized to take all necessary steps to prevent commercialization of technical education. In view of existence of such stipulation in the Central Law, the State Law cannot set up a Fee Structure Committee by encroaching upon the area which is occupied by the Central Law. It has already been held by the Supreme Court that in view of Entry 66 of the Central List, if the law is made pursuant to that entry, as has been done in the case of AICTE or under the Medical Council Act, the power of State to legislate in that field under Entry 25 of the Concurrent List is necessarily excluded. Even if it is assumed that the State has the legislative competence to enact the said Act, (which it does not have) a law to the extent of completely restraining the management of the private institutions to impose any fee amounts to violation of fundamental rights of persons establishing such institutions under Article 19(1)(g) of the Constitution in view of decisions in T.M.A. Pai Foundation and Others Vs. State of Karnataka and Others, .

47. In T.M.A. Pai's case, it has been held in paragraphs 38 to 45 at pages 540-42 of the report that the scheme in Unni Krishnan's case has the effect of nationalizing education. By framing the scheme in Unni Krishnan, the right of private unaided institutions to give admission and fix a fee was curtailed and as a result whereof private institutions became indistinguishable from Government institutions. Such scheme was held to be not valid and was overruled in paragraph 45, pages 541-42 of the report. But the same thing is sought to be introduced under the said Act. After overruling the scheme in Unni Krishnan's case, in T.M.A. Pai the Supreme Court came to hold that the right to establish and administer private educational institutions contains the following rights, namely, (a) to admit students, (b) to set up a reasonable fee structure, apart from other rights (see para-50). In para-54 of the said judgment it has been held that the right to establish an educational institution can be regulated, but such regulatory measures can be exercised to ensure maintenance of proper academic standards, infrastructure and atmosphere and prevention of mal-administration

by those who are in management. But fixation of a rigid fee structure and nominating students for admission are unacceptable restrictions. (see para-54), In paragraph 56 it has been clearly held that decision on the fee to be charged must necessarily be left to the private educational institutions as that does not depend on the funds of the Government. In paragraph 161 and at page 591 of the report, in answer to question No. 11 it has been held in T.M.A. Pai that the right to establish and administer educational institutions is guaranteed under the Constitution to all citizens under Articles 19(1)(g) and 26 and to minorities specifically under Article 30. The said right under Articles 19(1)(g) and 26 is subject to the provisions of Articles 19(6) and 26(a). That right can only be controlled and be made subject to reasonable restrictions under Article 19(6). The nature of restrictions which have been imposed under the said Act relating to admission of students by the Petitioners and charging of fee does not amount to reasonable restriction at all. Nor are those restrictions saved under Article 19(6) of the Constitution, assuming but not admitting that the State Government has the power to enact the said Act. Under the said Act, the entire thing is sought to be totally controlled by State Government. Under the said Act the right of the Petitioners to admit students and to charge fee has been totally extinguished. Thus the same is violative of the provisions contained in Article 19(1)(g) of the Constitution. Therefore, assuming that the State Government is competent to enact the said law, even then the said law purports to completely take away the fundamental right of the Petitioners under Article 19(1)(g) and is violative on that score also. This has been argued by Mr. Bagchi for the Petitioner in W.P. (C) No. 3689 of 2007 and this Court upholds the same.

48. Learned Counsel for both parties have relied on the following three judgments, namely, T.M.A. Pai's case (supra), Islamic Academy of Education's case (supra) and P.A. Inamdar's Case (supra). It would be noted that in none of the above judgments the question relating to legislative competence of the State to enact a Law in exercise of its power under Entry 25, List III in a field where there is already a pre-existing law by the Parliament in exercise of its power under Entry 66, List I was even remotely in issue. In P.A. Inamdar, in paragraph 155 of the said judgment there are observations to the effect that it is for the Central Government or the State Government in the absence of the "Central Legislation to come out with a detailed well thought out legislation on the subject. Such legislation is long awaited. The States must act towards this direction. It is not in dispute that till such a legislation is made, the Committees are appointed by the Supreme Court to look after the admission procedure and fee structure in such private unaided institutions. We shall advert to those Committees later. But the learned Counsel for the State has submitted that they have got authority to legislate in view of the aforesaid observations of the Supreme Court in P.A. Inamdar and also in view of the provision of Clause (5) of Article 15 of the Constitution. The expression "State" under Clause (5) of Article 15 of the Constitution includes the Parliament. In any event the State Government's competence to legislate cannot be conferred by Article 15(5) of

the Constitution. That is dealt with under Part XI, Chapter I of the Constitution read with the 7th Schedule.

49. Reference in this connection may be made to the concurring judgment of Justice Sinha in the case of Islamic Academy of Education (supra). In paragraph 87, page 756 of the report, the learned Judge while referring to the judgment in the case of T.M.A. Pai made it clear that the question as to whether the field with regard to Higher Education is covered by parliamentary legislation or not was not adverted to" and the scope of legislative competence of Parliament and State Legislature under Entry 66, List I and Entry 25, List III has also not been adverted to. In P.A. Inamdar (supra) that question never came up for consideration. The questions which were addressed by the Apex Court in P.A. Inamdar have been indicated in paragraph 27 and at page 568 (SCC) of the report. Those questions are:

(1) To what extent can the State regulate admissions made by unaided (minority or non-minority) educational institutions? Can the State enforce its policy of reservation and/or appropriate to itself and quota in admissions to such institutions?

(2) Whether unaided (minority and non-minority) educational institutions are free to devise their own admission procedure or whether the direction made in Islamic Academy for compulsorily holding an entrance test by the State or association of institutions and to choose therefrom the students entitled to admission in such institutions, can be sustained in light of the law laid down in Pai Foundation?

(3) Whether Islamic Academy could have issued guidelines in the matter of regulating the fee payable by the students to the educational institutions?

(4) Can the admission procedure and fee structure be regulated or taken over by the Committees ordered to be constituted by Islamic Academy?

50. It is clear from a perusal of the aforesaid questions that the question of legislative competence was not even remotely in issue before the Hon'ble Constitution Bench of Supreme Court either in T.M. Pai or in P.A. Inamdar. Therefore, when a question is not in issue before a Bench, its observations while dealing with some other issues cannot be treated to be an enunciation of law on the issues, which were never before it. In this connection, this Court is reminded of the caution sounded by the Constitution Bench judgment of the Supreme Court in the case of H.H. Maharajadhiraja Madhav Rao Jivaji Rao Scindia Bahadur of Gwalior and Others Vs. Union of India and Another, . In paragraph 138, at page 578 of the report, the learned Judges held as follows:

... it is difficult to regard a word, a clause or a sentence occurring in a judgment of this Court," divorced from its context, as containing a full: exposition of the law on a question when the question did not even fall to be answered in that judgment.

51. Therefore, observations in paragraph 155 in P.A. Inamdar which cannot be interpreted to have clothed the State with the legislative competence under Entry 25, List III of the 7th Schedule of the Constitution. This is more so when dealing specifically with such questions the Supreme Court has consistently taken a totally different view which has been discussed above.

52. It is well settled that a judgment is an authority for what it actually decides. The classic doctrine" on this aspects enunciated by Earl of Halsbury LC in *Quinn v. Leatham* 1901 AC 495 has been quoted with approval by the Supreme Court in the case of *The State of Orissa Vs. Sudhansu Sekhar Misra and Others*, as follows:

... a case is only an authority for what it actually decides. I entirely deny that it can be quoted for a proposition that may seem to follow logically from it. Such a mode of reasoning assumes that the law is necessarily a logical Code, whereas every lawyer must acknowledge that the law is not always logical at all.

So the contention of the State emanates from a misreading of the Supreme Court judgment in the case of Inamdar.

53. This Court is humbly of the opinion that the judgments of the Supreme Court cannot be read as a Statute nor can they be read as Euclid's theorem. How the judgments of the Supreme Court are to be read has been indicated by the Hon"ble Supreme Court in several decisions. Reference in this connection may" be made to the judgment of the Supreme Court in *Islamic Academy of Education v. State of Karnataka* wherein in paragraph 139 (SCC page 771) the Supreme Court made it very clear that a judgment is not to be read as a statute. The ratio of a judgment and its reasoning on which it is based is different from the relief finally granted or from the manner of the disposal of the writ petition. In coming to the said conclusion, learned Judges of the Supreme Court relied on Anr. judgment of the Supreme Court in the case of *Padma Sundara Rao v. State of Tamil Nadu* reported in 2000 (2) SCC 533 and on its previous judgment in *General Electric Co. Vs. Renuagar Power Co., .* In *Renuagar's* case, the Supreme Court held that the words and expression used in a judgment are not to be construed in the same manner as the Statutes or as words and expressions defined in the statutes. The Supreme Court quoted with approval the observation in *Renu Sagar's* case to the effect that a broad view has to be taken of the principles involved and a narrow and technical interpretation of the judgment of the Supreme Court must be avoided.

54. In paragraph 146 of the judgment in the case of Inamdar page 779 in SCC), Hon"ble Supreme Court held that a judgment cannot be read with reference to some sentence here and there to find out the intent and purport of the decision. The judgment has to be read in the context in which expressions were made and for the said purpose the Court has to consider and the constitutional and relevant statutory provision on which reliance has been placed.

55. In a recent judgment in the case of *State of Karnataka and Others Vs. C.*

Lalitha, , the Hon''ble Apex Court again reiterated the aforesaid principles in paragraphs 24 and 25 (page 755 of SCC). Following the aforesaid principles, it is fallacious to urge that para-155) in the case of Inamdar can clothe the State Government with competence to legislate in a field which is occupied by the Central law under the provisions of Entry 66, List I of the 7th Schedule.

56. Learned Counsel for the State has relied on the decision in the case of Dr Preeti Srivastava and Another Vs. State of M.P. and Others, to justify State's legislative competence under Entry No. 25, List III of the 7th Schedule to enact the said Act. The said judgment was delivered by Constitutional Bench of the Supreme Court. The views of Justice Majmudar was in the minority and learned Counsel for the State was placing reliance on the minority opinion of Justice Majmudar. In that judgment, the majority view was delivered by Justice Sujata V. Manohar and the learned Judge was pleased to observe as follows:

.... A State has, therefore, the right to control education including medical education so long as the field is not occupied by any Union legislation. Secondly, the State cannot, while controlling education in the State, impinge on standards in institutions for higher education. Because this is exclusively within the purview of the Union Government. Therefore, while prescribing the criteria for admission to the institutions for higher education including higher medical education, the State cannot adversely affect the standards laid down by the Union of India under Entry 66 of List 1. Secondly, while considering the cases on the subject it is also necessary to remember that from 1977, education, including, inter alia, medical and university education, is now in the Concurrent List so that the Union can legislate on admission criteria also. If it does so, the State will not be able to legislate in this field, except as provided in Article 254.

The minority judgment is not a judgment of the Court nor does it come within the concept of "Law declared" under Article 141 of the Constitution and as such is not binding upon any Court.

57. In the instant case, the State has not followed the provisions of Article 254 of the Constitution while enacting the said Act. In any event now State's power to legislate in the field of higher and technical education flows only from entry 25 of the Concurrent List and the field is occupied by various Central Laws. In any event, the requirement of following Article 254(2) on the part of State Legislature was a constitutional imperative, assuming but not admitting that the State Act is vitiated only on grounds of repugnancy and is not a transgression on the occupied field. But in the said Act the provision of Article 254(2) has not been followed. So the said Act is unconstitutional and cannot be sustained.

58. It is not in dispute that up to 2006 the Common Entrance Test which was conducted by the private educational institutions was done under the supervision of the Judges Committee. In 2006 the Petitioners had conducted Common Entrance Test for admitting the students to the respective institutions as well as they used to take students from the Joint Entrance Examination conducted by

the State Government. The CET conducted by the writ Petitioners in the previous year was under the supervision of Judges Committee. The questions for that examination were set up by the Biju Patnaik University of Technology. The examination was conducted by the Orissa University of Agriculture and Technology and evaluation of marks was done by Ravenshaw College which is a Deemed University and subsequently the counselling was done by the Utkal University, which is a Central Counselling Authority. So it cannot be said that the admission procedure was not transparent nor can it be said that the procedure was exploitative.

59. In so far as the Fee Structure of the Petitioners institutions was concerned, the same was also controlled by the Judges Committee. There is no allegation by the State before us either in its affidavit or in the course of submission that any of the institutions was taking Capitation Fee. No evidence to that effect was brought to our notice. It is no doubt true that such a Judges Committee was formed in view of the direction given by the Hon''ble Supreme Court in Inamdar''s case. Of those two Committees, the Fee Structure Committee was not properly functioning in view of the fact that an order passed by the Fee Structure Committee was set aside by Division Bench of this Court. But it cannot be disputed that in 2006, both admission and the determination of fee structure were done under the supervision of the Judges Committee. The Fee Structure Committee was formed under the Chairmanship of Justice P.K. Patra (Retd.). A decision of that Committee was set aside by a Division Bench of this Court in W.P. (C) No. 7760 of 2005 by its judgment and order dated 18.10.2006. This Court has been informed that the said Committee is not functioning now. In that view of the matter, this Court is recommending the name of Mr. Justice K.P. Mohapatra, a retired Judge of this Court for being appointed by the State, as the Chairman of that Committee. The rest of the Committee members may remain the same.

60. The other Committee for supervising admission tests under the Chairmanship of Mr. Justice Ch. P.K. Mishra is still functioning and may continue to function.

61. This Court has been informed that prior to 2006, in this State there was only a single window system for selection and admission to all the technical institutions of the State for both private and Government Educational Institutions i.e. Joint Entrance Examination in which all the students of the State were appearing in a single test for admission into Medical, Engineering and other Technical courses. Thereby one uniform standard was maintained for such admission. In 2006, the common Entrance test was introduced by the order of the Court under the supervision of a Judge''s Committee.

62. From 2008, the Judges'' Admission Committee can, after discussing the matter with the Government as well as with Petitioners, think of introducing one single window system examination as was being done prior to 2006 for admission in all Government as well private colleges in all streams, followed by one counselling procedure. If that is done students will have to appear in one

examination and choose their colleges in one counselling session. These directions are given in the interest of the students whose benefit must be kept in mind by the Court. So far 2007 is concerned, the procedure for admission which was followed in 2006 may continue.

63. For the reasons aforesaid, this Court holds that the Orissa Professional Educational Institutions (Regulation of Examination and Fixation of Fees) Act, 2007, as enacted, is unconstitutional and is struck down as inoperative and invalid and not binding on the Petitioners.

64. Even if it is held that the State Government has the legislative competence to enact the said Act, the said Act, as enacted, is violative of the provisions of Article 19(1)(g) of the Constitution of India. If so advised, the State Government can, following the principles of Article 19(1)(g), enact a law, if at all, only by following the provision of Article 254(2) of the Constitution. But that has not been done while enacting the said Act.

65. All the writ petitions are allowed to the extent indicated above. There will be no order as to cost.

N. Prusty, J.

66. I agree.